

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BMW NA OF NORTH AMERICA, LLC)
Plaintiff,) 2:11-cv-1909-LRH-PAL
v.)
LYLE ANDREW EPSTEIN; et al.,) ORDER
Defendants.)

Before the court is plaintiff BMW NA of North America, LLC’s (“BMW”) motion to dismiss defendants’ counterclaim for abuse of process. Doc. #11.¹ Defendant Lyle Andrew Epstein (“Epstein”) did not file an opposition.

On November 29, 2011, BMW filed a complaint against defendants for fraud. Doc. #1. In response, defendant Epstein filed an answer and counterclaim for abuse of process. Doc. #8. Thereafter, BMW filed the present motion to dismiss the counterclaim (Doc. #11) to which Epstein did not respond.

While the failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion under LR 7-2(d), Epstein’s failure to file an opposition, in and of itself, is an insufficient ground for dismissal of his claim. *See Ghazali*

¹ Refers to the court's docketing number.

1 *v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Before dismissing a cause of action, a district court is
2 required to weigh several factors: (1) the public's interest in the expeditious resolution of litigation;
3 (2) the court's need to manage its docket; (3) the risk of prejudice to the defendant; 4) the public
4 policy favoring disposition of cases on their merits; and (5) the availability of less dramatic
5 sanctions. *Id.*

6 Here, these factors weigh in favor of dismissing Epstein's counterclaim. The need for the
7 expeditious resolution of cases on the court's docket is strong. BMW has an interest in resolving
8 this matter in a timely manner. Further, there is a lack of prejudice because Epstein has shown an
9 unwillingness to continue litigating his counterclaim which weighs in favor of granting the motion.
10 Additionally, although public policy favors a resolution on the merits, the court finds that dismissal
11 of Epstein's counterclaim is warranted in light of these other considerations.

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13 IT IS THEREFORE ORDERED that plaintiff's motion to dismiss (Doc. #11) is
14 GRANTED. Defendant's counterclaim for abuse of process is DISMISSED.

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IT IS SO ORDERED.

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DATED this 28th day of March, 2012.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

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